

# THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

GORDON E. NEUENSCHWANDER  
EXECUTIVE VICE PRESIDENT  
& GENERAL COUNSEL

G. EDWARD YURCON  
ASSISTANT GENERAL COUNSEL

RICHARD A. PORACH  
ATTORNEY

9-255A020

DEC 21 1979  
FEE \$ 50.00

ICC Washington, D. C.

RECORDATION NO. 11226 Ed 1425

DEC 21 1979 - 10 50 AM  
INTERSTATE COMMERCE COMMISSION

324 P&LE TERMINAL BUILDING  
PITTSBURGH, PA. 15219  
PHONE (412) 261-3201

December 20, 1979

Ms. Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
12th and Constitution Ave., N.W.  
Washington, D. C. 20423

Dear Ms. Mergenovich:

Enclosed for filing with the Commission pursuant to Section 11303 of the Interstate Commerce Act is the original document described below, together with three additional counterparts. The document is:

Interim Use Agreement, dated as of December 19, 1979, between Greenville Steel Car Company and The Pittsburgh and Lake Erie Railroad Company providing for temporary use of up to 220 100-ton, 3420 cubic feet, Triple Hopper Cars (P&LE Nos. 81,780-81,999)

In compliance with the Commission's rules and regulations, you are advised as follows:

LESSOR: Greenville Steel Car Company  
Greenville, Pennsylvania 16125

LESSEE: The Pittsburgh and Lake Erie Railroad Company  
P&LE Terminal Building  
Pittsburgh, Pennsylvania 15219

Following is a general description of the railroad equipment covered by said document:

<u>No. of Units</u>	<u>Description</u>	<u>Identifying Road Nos.</u>
220	100-ton, 3420 cubic feet, Triple Hopper Cars	P&LE Nos. 81,780-81,999 both inclusive

*Counterpart by Greenville Steel Car Co.*

Ms. Agatha L. Mergenovich

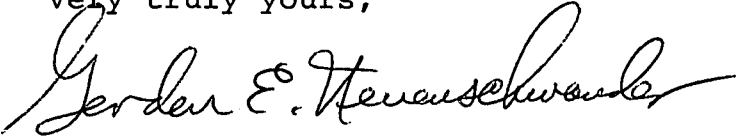
-2-

December 20, 1979

Also enclosed is Pittsburgh and Lake Erie Railroad Company Voucher No. 106118, dated December 20, 1979, in the amount of \$50.00, payable to the Treasurer of the United States, to cover the recordation fee prescribed by the Commission in its rules and regulations.

Please acknowledge receipt at your earliest convenience by stamping and returning to me the original document and two counterparts.

Very truly yours,

A handwritten signature in cursive script, reading "Gordon E. Heuschke". The signature is written in dark ink and is positioned below the typed name "Gordon E. Heuschke".

encs.

Office of the Secretary  
Department of Transportation

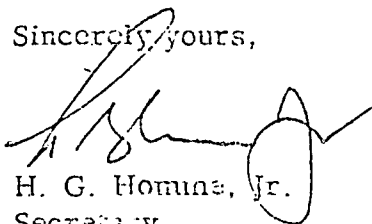
OFFICE OF THE SECRETARY

Gordon E. Neuenschwander  
The Pittsburgh & Lake Erie RR Co.  
324 P&LE Terminal Building  
Pittsburgh, Pa. 15219

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/21/79 at 10:50AM, and assigned recordation number(s). 11226

Sincerely yours,

  
H. G. Homins, Jr.  
Secretary

Enclosure(s)

SE-30  
(3/79)

11226  
RECORDATION NO. 11226  
DEC 21 1979 - 10 50 AM  
INTERSTATE COMMERCE COMMISSION

INTERIM USE AGREEMENT

Dated as of December 19, 1979

Between

GREENVILLE STEEL CAR COMPANY  
(Manufacturer)

and

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY  
(P&LE)

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Covering

Two Hundred twenty (220) Hopper Cars

THIS INTERIM USE AGREEMENT, dated as of December 19, 1979, by and between GREENVILLE STEEL CAR COMPANY, a Pennsylvania corporation (Manufacturer), and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (P&LE).

W I T N E S S E T H:

The Manufacturer and P&LE heretofore entered into an agreement ("Purchase Agreement") based upon Manufacturer's Proposal Letter, dated October 2, 1979, and P&LE's Purchase Order No. 10-18-2, dated October 11, 1979 (copies of which are made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to P&LE, and P&LE agreed to accept and pay for the following railroad cars:

500 100-ton 3420 cubic feet Hopper Cars, to bear  
P&LE road numbers 81,500-81,999, inclusive.

The Manufacturer completed delivery to P&LE of 280 of the aforesaid railroad cars on December 19, 1979, pursuant to a Conditional Sale Agreement between the parties dated as of November 1, 1979. However, inasmuch as P&LE has not as yet consummated financing arrangements (pursuant to a Conditional Sale Agreement) in respect to 220 of the aforesaid railroad cars (the "Remaining Cars"), it is not in a position to accept delivery of and pay for the Remaining Cars under the terms of

the Purchase Agreement at this time. P&LE represents that such financing arrangements will be consummated, however, on or before January 14, 1980 (hereinafter referred to as the "Cut-Off Date"). P&LE (in order that it may use the Remaining Cars pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Remaining Cars on their completion, solely as a bailee of the Remaining Cars and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to P&LE and P&LE hereby accepts from the Manufacturer the Remaining Cars as of the date each unit of said cars is delivered to the Bessemer and Lake Erie Railroad Company at Shenango, Pennsylvania, or other such place as may be specified by P&LE, for the period ending on the earlier of January 14, 1980, or the date of consummation of the above financing arrangements. At such time this Interim Use Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Remaining Cars shall remain in the Manufacturer and P&LE's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Interim Use Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. P&LE, without expense to the Manufacturer, will promptly cause this Interim

Use Agreement to be filed with the Interstate Commerce Commission for recordation under Section 11303 of the Interstate Commerce Act. In addition, P&LE shall do such other acts as may be required by law or reasonably requested by the Manufacturer for the protection of the Manufacturer's title to and interest in the Remaining Cars.

P&LE agrees that it will permit no liens of any kind to attach to the Remaining Cars, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Remaining Cars of the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Remaining Cars by P&LE during the term of this Interim Use Agreement.

P&LE's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Interim Use Agreement.

P&LE will, at its own expense, keep and maintain the Remaining Cars in good order and running condition, and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Remaining Cars

which may be damaged or destroyed by any cause during the term of this Interim Use Agreement.

Prior to the delivery of each Remaining Car to P&LE under this Interim Use Agreement, it will be numbered with a number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Remaining Car, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE COMMISSION

P&LE hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Remaining Cars.

If, during the effective period of this Interim Use Agreement, such markings shall at any time be removed, defaced, or destroyed on any Remaining Car, P&LE shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Remaining Cars as provided in the Purchase Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Interim Use Agreement or in the



Purchase Agreement relating to the Remaining Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the Purchase Agreement, and P&LE receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payment thereafter to be made by P&LE under this Interim Use Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in a form satisfactory to P&LE.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Interim Use Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Remaining Cars, nor subject to any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to P&LE by the Manufacturer. Any and all of such obligations howsoever arising shall be and will remain enforceable by P&LE, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits, or advantages assigned pursuant to this Interim Use Agreement).

P&LE agrees with the Manufacturer that the execution by the Manufacturer of this Interim Use Agreement or the delivery by the Manufacturer to P&LE of the Remaining Cars, as contemplated by this Interim Use Agreement, shall not relieve P&LE of its obligations to accept, take and pay for the Cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement.

In the event that payment to Manufacturer of the purchase price for any unit of the Remaining Cars delivered pursuant to this Interim Use Agreement has not been made on or before the Cut-Off Date, P&LE agrees to purchase any such unit and to pay the purchase price therefor on the Cut-Off Date. The term "purchase price" as used herein shall mean the firm price per unit as contained in P&LE's Purchase Order No. 10-18-2.

ATTEST:

Edward H. Moore  
Secretary

GREENVILLE STEEL CAR COMPANY

By

C. J. Samsky  
President

ATTEST:

Edward H. Moore  
Assistant Secretary

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

By

Gordon E. Henschel  
Executive Vice President

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY )

ss:

On this 20<sup>th</sup> day of December, 1979, before me personally appeared A.F. Saxosdy, to me personally known, who being by me duly sworn, says that he is the President of Greenville Steel Car Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Caroline B. Hodge

My Commission Expires: Mar. 16, 1982

COMMONWEALTH OF PENNSYLVANIA)  
COUNTY OF ALLEGHENY ) ss:  
)

On this 20<sup>d</sup> day of December, 1979, before me personally appeared GORDON E. NEUENSCHWANDER, to me personally known, who being by me duly sworn, says that he is Executive Vice President of The Pittsburgh and Lake Erie Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Molly A. Tegeler  
Notary Public

MOLLY A. TEGELER, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES OCT. 17, 1983  
Member, Pennsylvania Association of Notaries

My Commission Expires: \_\_\_\_\_